

Remarks

The Examiner rejected claims 1–4, 6–21, and 32–44, objected to claim 5, and allowed claims 22–31. Claims 11 and 32 have been amended. Claims 17, 18, 40, and 41 have been canceled. Claims 1–16, 19–39, and 42–44 remain in the application.

The Examiner rejected claims 1, 3, 4, 6, 7, and 10 under 35 U.S.C. 102(b) as being anticipated by Lapeyre et al. (US 5,507,383). The rejection of these claims is traversed. In his rejection, the Examiner stated that Lapeyre et al. shows “a modular conveyor belt with a flat upper surface 15 and a ribbed member 11 with a solid base 17 and a textured upper ridge structure 16 atop base 16.” MPEP § 2131 provides: “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Contrary to the Examiner’s statement, Lapeyre et al. does not disclose, among other things, a plurality of laterally spaced longitudinal ribs. The textured upper ridge structure of Lapeyre et al. instead defines intersecting diagonally disposed ridges. Therefore, the 35 U.S.C. 102(b) rejection of claims 1, 3, 4, 6, 7, and 10 is unsupported by the art and should be withdrawn.

The Examiner rejected claims 32 and 33 also under 35 U.S.C. 102(b) as being anticipated by Lapeyre et al. (US 5,507,383). Claim 32 has been amended and claims 40 and 41 have been canceled. The rejection is traversed. Lapeyre et al. does not disclose, among other things, a plurality of teeth arranged at the top side of the module body into a plurality of longitudinal rows of teeth separated by longitudinal slots extending along the top side, wherein each tooth defines

with a consecutive tooth on a row a notch that separates the consecutive teeth longitudinally, and wherein the longitudinal dimension of the notches is less than the lateral dimension of the slots. Therefore, the 35 U.S.C. 102(b) rejection of claims 32 and 33 is unsupported by the art and should be withdrawn.

The Examiner rejected claims 2, 11–21, and 34–44 under 35 USC § 103(a) as being unpatentable over Lapeyre et al. in view of Kasai et al. (US 6,068,112). The rejections are now addressed.

Before prior art can be combined or modified, there must be a basis in the art for the combination or modification. The Lapeyre et al. and Kasai et al. references are not properly combinable or modifiable as suggested by the Examiner. If the hills 3 and grooves 4 of Kasai et al. were used to substitute for the high-friction resilient diamond surface pattern of the modular conveyor belt of Lapeyre et al., the substitution would render the high-friction conveyor of Lapeyre et al. unsatisfactory for its intended purpose. The purpose of the grooved surface of Kasai et al. surface is to provide a reduced friction conveyor chain (see Abstract); the purpose of the Lapeyre et al. conveyor belt is to provide a high friction conveying surface—just the opposite. Because the Kasai et al. surface would render the Lapeyre et al. high-friction conveyor belt unsatisfactory for its intended purpose (see MPEP §2143.01 and *In re Gordon*, 221 USPQ 1125 (Fed. Cir. 1984)), the Examiner has failed to establish a *prima facie* case of obviousness. Consequently, the rejection is improper.

Furthermore, Lapeyre et al. and Kasai et al., in combination, do not show all the elements of the claims. In rejecting claims 2, 11–21, and 34–44, the Examiner stated that Kasai et al. shows rows of truncated rectangular pyramids and dimensions and spacings of the pyramids and

the V-shaped notches between the rows of pyramids. MPEP § 2142 provides: “[A] prior art reference [used to establish a *prima facie* case of obviousness] ... must teach or suggest all the claim limitations.” “The mere absence of an explicit requirement [of a claim] cannot reasonably be construed as an affirmative statement that [the requirement is in the reference].” *In re Evanega*, 4 USPQ2d 1249 (Fed. Cir. 1987). Lapeyre et al. and Kasai et al., separately or in combination, do not show all the limitations of the claims as amended and, furthermore, do not suggest the modification of its own teaching to arrive at applicants’ invention.

Kasai et al. shows, in FIGS. 3–5, a chain having a pattern of hills 3 and a gridwork of long grooves 4. The dimensions of the in-line and transverse grooves, as shown in the drawings, are identical. The deficiencies of Lapeyre et al. have already been mentioned in response to the 102(b) rejection. For this additional reason, the 35 USC § 103(a) rejection of claims 2, 11–21, and 34–44 over Lapeyre et al. in view of Kasai et al. should be withdrawn.

The Examiner rejected claims 8 and 9 under 35 USC § 103(a) as being unpatentable over Lapeyre et al. in view of Guldenfels (US 6,382,404). The deficiencies of Lapeyre et al. with regard to independent claim 1 have already been mentioned. The tall sinuous flights 22 of Guldenfels hold material against their broad surfaces; the flights are not designed to support articles on their top edges. Adding the tall sinuous flight 22 of Guldenfels to Lapeyre et al. would create a top-heavy unstable platform for supporting conveyed articles or personnel. For this reason, the 35 USC § 103(a) rejection of claims 8 and 9 over Lapeyre et al. in view of Guldenfels should be withdrawn.

Applicant respectfully requests reconsideration of the rejections of the claims in view of these remarks and amendments and allowance of claims 1–16, 19–39, and 42–44.

This amendment is being sent within three months of the Office Action so no extension of time petition fee should be due. A supplemental Information Disclosure Statement is being filed with this Response. Authorization to charge the fee for consideration of the Information Disclosure Statement and any other fees deemed necessary for consideration of this response to Deposit Account No. 12-0090 is hereby given. If the Examiner thinks a telephone conference would expedite the prosecution of this application, he is invited to call the undersigned attorney.

Respectfully submitted,
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